

No. 14454

United States
Court of Appeals
for the Ninth Circuit.

ARTURO FLETES-MORA,

Appellant,

vs.

HERBERT BROWNELL, Attorney General of the
United States,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
Southern District of California.
Central Division.

FILED

DEC 24 1951

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.—12-10-54

PAUL P. O'BRIEN,

CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

DAVID C. MARCUS,
206 S. Spring St.,
Los Angeles 12, Calif.

For Appellee:

LAUGHLIN E. WATERS,
United States Attorney;
MAX F. DEUTZ,
JAMES R. DOOLEY,
Assistants U. S. Attorney,
600 Federal Bldg.,
Los Angeles 12, Calif.

United States District Court, Southern District of California, Central Division

Civil Action No. 16094-WM

ARTURO FLETES-MORA,

Petitioner,

vs.

HERBERT BROWNELL, Attorney General of the United States,

Respondent.

PETITION FOR DECLARATION OF UNITED STATES NATIONALITY AND FOR DECLARATORY RELIEF

Comes Now the petitioner above named and complains and alleges:

I.

The above Court has jurisdiction of the within matter under the provisions of section 2201, Title 28, U. S. C. A. and under section 360(a) of Public Law No. 414, 66 Stat. 273.

II.

Petitioner herein is a constitutional native citizen of the United States, born on the 23rd day of September, 1925, at Los Angeles, California, and is presently residing in the City and County of Los Angeles, State of California, within the jurisdiction of the above-entitled Court. [2*]

*Page numbering appearing at foot of page of original Certified Transcript of Record.

III.

Petitioner herein claims the rights and privileges as a citizen and national of the United States and has been denied such rights and privileges by the respondent herein on the ground that said respondent contends that he is not a citizen of the United States, but an alien and citizen and national of the Republic of Mexico, and is not entitled to the rights and privileges as a citizen of the United States.

IV.

Petitioner alleges that he is in truth and in fact a constitutional citizen and national of the United States and is entitled to all the rights and privileges as a citizen of the United States. That the respondent herein has denied petitioner his rights and privileges as a citizen of the United States in that it was determined that he is a citizen and national of the Republic of Mexico, and not entitled to be and remain in the United States, or to enter the United States as a citizen thereof, in violation of petitioner's rights and privileges as a citizen of the United States.

V.

Petitioner alleges that an actual and bona fide dispute exists between said petitioner and the respondent herein concerning his status as a citizen and national of the United States. The respondent contends that petitioner is an alien and not a citizen of the United States and is not entitled to remain in the United States. Petitioner contends that he is a constitutional native-born citizen of the United States and as such is entitled to all the rights

and privileges, and immunities as a citizen of the United States, and entitled to be and remain here as such citizen.

VI.

Petitioner alleges that his status as a national of the [3] United States did not arise out of or in connection with any exclusion proceedings under the provisions of Public Law 414, 66 Stat. 273, or any other Act, or is an issue in such exclusion proceedings.

Wherefore, petitioner prays judgment adjudging and declaring him to be a citizen and national of the United States.

That pending the determination of the litigation, the respondent be restrained and enjoined from refusing petitioner the rights and privileges as an American citizen and national to be and remain in the United States; and

For such other and further relief as to this Court may seem just and proper.

/s/ DAVID C. MARCUS,
Attorney for Petitioner.

Duly Verified.

[Endorsed]: Filed November 30, 1953. [4]

[Title of District Court and Cause.]

MOTION FOR DISMISSAL UNDER RULE
12(b)(1)(2)(6) F.R.C.P.

Comes Now the defendant above named and without waiving any of his objections to the jurisdiction

of the Court and especially appearing for the purpose of this Motion only, by and through his attorneys, Laughlin E. Waters, United States Attorney and Robert K. Grean, Assistant United States Attorney, by Robert K. Grean, and moves the Court for dismissal of the within action pursuant to Rule 12(b) of the Federal Rules of Civil Procedure on the following grounds:

- (1) Lack of jurisdiction over the subject matter.
- (2) Lack of jurisdiction over the person, and
- (6) Failure to state a claim upon which relief can be granted.

This Motion is based and will be presented upon the Complaint of the plaintiff filed herein, upon these Motion papers, upon the Order to Show Cause heretofore issued by the above-entitled Court, and upon the Memoranda of Points and Authorities heretofore filed and those attached hereto.

LAUGHLIN E. WATERS,
United States Attorney;

MAX F. DEUTZ,
Assistant U. S. Attorney,
Chief of Civil Division,

/s/ ROBERT K. GREAN,
Assistant U. S. Attorney, Assistant Chief of Criminal Division, Attorneys for Defendant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed February 19, 1954. [8]

[Title of District Court and Cause.]

ORDER ON MOTION TO DISMISS

This cause having come before the court for hearing on motion of defendant, filed February 19, 1954, to dismiss the action, and the motion having been argued and submitted for decision; and it appearing to the court:

- (1) that plaintiff sues "for declaration of United States nationality and for declaratory relief" seeking a judgment "declaring him to be a citizen and national of the United States";
- (2) that plaintiff invokes the jurisdiction of this court "under the provisions of section 2201, Title 28, U. S. C. A. and under section 360(a) of Public Law No. 414, 66 Stat. 273" [8 U. S. C. § 1503];
- (3) that 28 U. S. C. § 2201 authorizing declaratory judgments does not confer any added jurisdiction [11] upon the federal courts but merely enlarges the "range of remedies available" [Skelly Oil Co. vs. Phillips Co., 339 U. S. 667, 671 (1950); Southern Pac. Co. vs. McAdoo, 82 F.2d 121 (9th Cir. 1936)];
- (4) that although "Herbert Brownell, Attorney General of the United States" is the defendant named, the action is in legal effect one against the Government [Larson vs. Domestic & Foreign Corp., 337 U. S. 682 (1949); cf. Morrison vs. Work, 266 U. S. 481, 486-488 (1925)]; and this court has jurisdiction to adjudicate actions against the Gov-

ernment only in instances and under circumstances expressly consented to by the sovereign through act of Congress [Munro vs. United States, 303 U. S. 36 (1938); United States vs. Clarke, 8 Pet. (33 U. S.) 436, 443 (1834)];

(5) that by 8 U. S. C. § 1503(a) the Government has consented to be sued in this court in an action such as that at bar only in cases where the controversy as to status did not arise in, and is not in any way connected with, an exclusion proceeding, and there has been final administrative denial within five years of the claimed "right or privilege as a national of the United States" [see Gonzalez-Gomez vs. Brownell, 114 F. Supp. 660, 661 (S.D. Cal. 1953); cf. Lynch vs. United States, 292 U. S. 571, 582 (1934); Fouts vs. United States, 67 F.2d 249, 250 (5th Cir. 1933)];

(6) that plaintiff does not allege that either of the conditions to sovereign consent mentioned in paragraph (5) above has been met in the action at bar;

(7) that plaintiff does not seek judicial review of administrative action within the jurisdiction [12] conferred upon this court by the Administrative Procedure Act, 5 U. S. C. §§ 1001, 1009 [cf. Blackmar vs. Guerre, 342 U. S. 512, 515-516 (1952); Heikkila vs. Barber, 345 U. S. 229, 230-233 (1953)];

(8) that the case does not arise under the Civil Rights Act [42 U.S.C. §§ 1981-1994], so jurisdiction is not conferred by 28 U. S. C. § 1333 [cf.

Hague vs. CIO, 101 F.2d 774, 787-790 (3d Cir. 1939), modified and affirmed, 307 U. S. 496, 506-514, 527-532 (1939)];

(9) that since this court has no general grant of jurisdiction over the status of aliens or nationals or citizens [see Grace vs. American Central Ins. Co., 109 U. S. 278 (1883)]; and the Government has not waived sovereign immunity to suit under the circumstances alleged, jurisdiction is lacking at bar over both the subject matter of the action and the person of the defendant in his official capacity [cf. Long vs. United States, 78 F.Supp. 35 (S.D. Cal. 1948)];

(10) that if the action could be construed as a suit against Herbert Brownell in his individual capacity, jurisdiction over the subject matter would exist, assuming the requisite amount is involved, because "the matter in controversy * * * arises under the Constitution, laws or treaties of the United States" [28 U. S. C. § 1331]; but present jurisdiction of this court over the person of the defendant, qua individual, would remain lacking [cf. McGrath vs. Kristensen, 340 U. S. 162, 169-170 (1950); Williams vs. Fanning, 332 U. S. 490 (1947); Perkins vs. Elg, 99 F.2d 408, 409-410, 413-414 (D.C. Cir. 1938), modified and affirmed, 307 U. S. 325, 328, 349-350 [13] (1939); National Conf. etc. Lotteries vs. Goldman, 85 F.2d 66 (2d Cir. 1936)];

It is Ordered that defendant's motion to dismiss for lack of jurisdiction over both the subject matter

and the person of the defendant is hereby granted [Fed. Rules Civ. Proc., Rule 12(b)(1)(2), (h), 28 U. S. C. A. 335, 336 (1951)].

It is Further Ordered that the defendant serve and lodge with the Clerk within five days a judgment of dismissal to be settled under local rule 7.

It is Further Ordered that this dismissal shall not operate as an adjudication upon the merits [Fed. Rules Civ. Proc., Rule 41(b), 28 U. S. C. A. at 380], and the judgment shall so provide.

It is Further Ordered that the Clerk this day serve copies of this order by United States mail upon the attorneys for the parties appearing in this cause.

March 11, 1954.

/s/ WM. C. MATHES,

United States District Judge.

[Endorsed]: Filed March 11, 1954. [14]

In the United States District Court in and for the
Southern District of California, Central Division

No. 16094-WM Civil

ARTURO FLETES-MORA,

Plaintiff,

vs.

HERBERT BROWNELL, Attorney General of the
United States,

Defendant.

JUDGMENT OF DISMISSAL

The above-entitled matter came on regularly for hearing on defendant's Motion for Dismissal under Rule 12(b)(1)(2)(6) of the Federal Rules of Civil Procedure on March 1, 1954, in the above-entitled Court, before the Honorable William C. Mathes, Judge Presiding, the plaintiff being represented by his attorneys, David C. Marcus and William Bronsten, by David C. Marcus, and the defendant being represented by his attorneys, Laughlin E. Waters, United States Attorney, and Robert K. Grean, Assistant U. S. Attorney, by Robert K. Grean; and the Court having considered defendant's Motion for dismissal and counsels' Memoranda in regard thereto, and having heard the oral argument of counsel, and having heretofore on the 11th day of March, 1954, filed its Order on Motion to Dismiss, and being fully advised in the premises,

Now, Therefore, it is Hereby Ordered, Adjudged and Decreed that plaintiff's Petition for Declara-

tion of United States Nationality and for Declaratory Relief be, and the same is hereby dismissed for lack of jurisdiction over the subject matter and lack of jurisdiction over the person (Federal Rules of Civil Procedure, Rule 12(b)(1)(2)). [15]

It is Further Ordered that this Dismissal shall not operate as an adjudication upon the merits.

It is Further Ordered that the defendant have costs against the plaintiff. Costs taxed at \$20.00.

Dated: This 29th day of March, 1954.

/s/ WM. C. MATHES,

Judge, U. S. District Court.

Affidavit of Service by Mail attached.

Lodged March 17, 1954.

[Endorsed]: Filed March 30, 1954.

Docketed and entered March 30, 1954. [16]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is Hereby Given that the petitioner in the above-entitled action hereby appeals to the United States Court of Appeals for the Ninth Circuit from the judgment, and the whole thereof, entered in said matter on the 30th day of March, 1954.

Dated: This 25th day of May, 1954.

/s/ DAVID C. MARCUS,

Attorney for Petitioner.

Affidavit of Service by Mail attached.

[Endorsed]: Filed May 27, 1954. [18]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages consist of the original Petition for Declaration of United States Nationality and Declaratory Relief; Motion for Dismissal; Order on Motion for Dismissal; Judgment of Dismissal; Notice of Appeal; Designation of Record on Appeal and Order Extending Time to Docket Appeal which constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$2.00, which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 23rd day of July, A.D. 1954.

[Seal] EDMUND L. SMITH,
Clerk;

By /s/ THEODORE HOCKE,
Chief Deputy.

[Endorsed]: No. 14454. United States Court of Appeals for the Ninth Circuit. Arturo Fletes-Mora, Appellant, vs. Herbert Brownell, Attorney General of the United States, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed July 26, 1954.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

United States Court of Appeals for the Ninth
Circuit

No. 14,454

ARTURO FLETES-MORA,

Appellant,

vs.

HERBERT BROWNELL, Attorney General of the
United States,

Appellee.

STATEMENT OF POINTS ON APPEAL

The above-named appellant hereby designates the following points on appeal in the above-entitled matter:

That the lower Court erred in dismissing the petition herein for lack of jurisdiction over the subject matter and person of the defendant.

Dated this 10th day of August, 1954.

/s/ DAVID C. MARCUS,
Attorney for Appellant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed August 16, 1954.

